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Agent's Report - 01/14.2016

[Printer-Friendly Version](#)**TO: Franklin Conservation Commission****FM: George Russell, AICP
Conservation Agent****RE: Agent's Report****DATE: January 12, 2016****REMINDER: Please plan on being a couple of minutes early to meet the new Assistant Town Administrator.****1.0. Projects**

1.1. Town of Franklin DPW sidewalk/drainage project: Replacement and improvements to the existing sidewalk and drainage infrastructure will greatly improve stormwater management and pedestrian safety. In your packets is an outline of the reasons to consider for the variance to work in the 25' buffer as requested by the Commission. DEP has assigned an NOI number, 159-1115, and does not have any comments.

The potential vernal pool referenced in the application by the wetlands scientist is located NE of the intersection of Pleasant and Miller and is beyond the limit of physical work for the project. I have included in your packets the process for certification of a vernal pool should the Commission decide to pursue this with the NHESP.

I would recommend that if approved, the Commission may want to consider the following as reasons for approval:

- The proposed improvements will allow greater management of stormwater generated on site and help prevent illicit discharges to the wetlands resource areas;
- Any work within the 25' buffer is in the existing right-of-way and in a previously disturbed area and thus there will be no "new" disturbance;
- The wetlands boundaries have been deemed to be accurate;
- Improved sidewalks will contribute to enhanced pedestrian safety;
- The construction of the drainage improvements thus falls within the Commission's jurisdiction under 310 CMR 10.02 (1) and is subject to regulations under 310 CMR 10.02 (2) and (2) (b);
- There are no known or suspected priority habitats on the site; and
- The site is subject to the local and state stormwater requirements and there will be no change in the direction or volume of current stormwater run-off.

I would also recommend that the following stipulations be attached to the approval: 20, 24-30, 34, 38-40 & 44.

1.2. 300 & 340 East Central St. NOIs: Final plans have been submitted to BETA Engineering but the final approval has NOT been received from BETA. Until this final approval is received, I would suggest the application be continued.

When the final approval is received, I would suggest the following reasons for approval:

- The proposed improvements will allow great management of stormwater generated on site and help prevent illicit discharges to the wetlands resource areas;
- The wetlands boundaries have been deemed to be accurate and approved by the Commission's peer reviewer;
- The construction of the drainage improvements falls within the Commission's jurisdiction under 310 CMR 10.02 (1) and is subject to regulations under 310 CMR 10.02 (2) and (2) (b);
- The project is subject to the Franklin Wetlands By-law and regulations and compliance with these have been verified by the Commission's peer reviewer;
- There are no known or suspected priority habitats on the site; and
- The site is subject to the local and state stormwater requirements and the proposed stormwater management systems and the incorporated detention basins have been reviewed by BETA Engineering as part of the Planning Board's and the Commission's peer review process.

I would also recommend that the following stipulations be attached to the approval: 19-41, 44, 46 & 47.

1.3. 67 Prospect St. NOI: I have conducted a field inspection and generated a review letter to the applicant. This is a relatively straight forward application and the revised plans have been submitted. However, as of this date we do not have a NOI number from DEP and until this number is obtained, the hearing should be continued. If the number is received by the meeting, I would recommend that following special conditions be attached to any approval: 20, 22-30, 38, 34 & 44.

1.4. 100 Financial Park, ANRAD: In terms of length and complexity, this is a significant ANRAD and I would strongly recommend peer review to verify the lines. I have already given our peer reviewer a heads up and a copy of the application has been delivered to BETA. Should the Commission agree that peer review is necessary, the hearing should be continued and a vote authorizing the peer review is required under the local by-law. I would recommend that the hearing be continued until February 18, 2016.

1.5. ANRAD Lincoln Street: Once again, In terms of length and complexity, this is a significant ANRAD and I would strongly recommend peer review to verify the lines. I have already given our peer reviewer a heads up and a copy of the application has been delivered to BETA and a fee proposal has been received from BETA. Should the Commission agree that peer review is necessary, the hearing should be continued and a vote authorizing the peer review is required under the local by-law. I would recommend that the hearing be continued until February 18, 2016.

2.0. General Business

2.1. Minor buffer Zone Activities

2.1.1. 1 Morse Pond Court: A review of the application and a site inspection would indicate that there are no issues with approving the MBZA. However, given the slopes in the rear of the lot, I would recommend that erosion controls be installed at the toe of the slope in the rear and be inspected by my office prior to any construction.

2.2 Permit modifications/extensions

2.2.1. Hydro raking Beaver Pond: This permit will expire in May and under the local by-law can only be extended for one year. Further, as per C. 181-8 D of the local by-law, this will be the last extension permitted.

2.2.2. 529 W. Central St.: In your packet please find a letter and a stop work order for 529 W. Central St. The contractor on site has removed the erosion control barriers that serve as the limit of work and started to work beyond them for a part of the project not approved by the Commission under the NOI. The letter outlines additional non-compliance issues with the project.

It is my opinion, that the "new" work must be approved via an amendment to the existing NOI and the non-compliance issues addressed prior to any amendment being granted. In addition, the "new" work is in an easement that is on property not owned by the developer of the Midas project. Authorization from the property owner to apply for the amendment must be forthcoming if the language in the easement does not authorize the permit amendment.

2.3. Certificate of Compliance

2.3.1. 30 Stonehedge Road: A file review and site visit was undertaken. There is one deviation from the approved plan: a retaining wall was approved but not constructed. Given that this is a "subtraction" vis-a-vis an "addition" to the plan, I would suggest that the Commission could still grant the release, with the clear understanding to the applicant that should this wall be needed in the future, an NOI will be needed.

2.4. Discussion items

2.4.1. DelCarte Pond Study: The Commission's consultant, ESS, will present the draft DelCarte Pond Study findings.

2.4.2. 2 Angelo: This item in before the Commission at my recommendation. The applicant has completed all work approved under the NOI. However when approved, the Commission attached a special condition requiring bi-annual reporting. No reports were ever submitted and thus we are "missing" 15 years of reports.

The major difference between this application and others that have not complied with the reporting requirements is that this project is finished whereas the others were on-going. Obviously, the missing reports cannot be produced and there would appear that holding up the Certificate of Compliance would be fruitless at this point in time. One thing the Commission might want to entertain is to have the property owner get a statement from a wetlands scientist, NOT an engineer, that there was no negative impact on the resource area from the pool construction. I do not want the property owner to incur additional expense, but the Commission needs to consider the non-compliance for those who come before them in the future with the same issue, (and this is going to happen).

2.4.3. Education and Outreach: I have discussed the issue of social media and the Commission with the town attorney. He is strongly against the Commission as a body being connected to social media; there are too many potential issues with the open meeting law, freedom of information law and the quasi-judicial nature of the Commission and its permitting function.

2.4.4. Stormwater management and the local by-law: At the 12/3/15 meeting, the Commission recommended that the local by-law be amended to allow the DPW to maintain detention and retention basins (all 98 of them) as long as the design and functionality of the basin was not changed and the Commission was notified as to when the basins would be worked on. I have included the language submitted to the Council in your packets.

The Council is currently discussing this issue and has requested the Commission Chair, any members who wish to attend and I attend a meeting in February to discuss whether the by-law should be amended to exempt ALL basins from regulation, not just those maintained by the DPW.

The Town attorney believes that basins not maintained by the DPW should NOT be exempted. To do so raises a significant risk that the basic functions so the basins may be compromised and the overall infrastructure of the town will thus be negatively impacted. I agree with this. If exempted, no town agency has jurisdiction over these structures if something "goes wrong" unless there is something in the land records to the contrary. E.G., what if the outlet pipes were damaged or clogged or replaced and were the "wrong" size, or were broken and the basin then didn't work. In addition, the basins that the DPW maintains are, among others, often the ones in residential developments. Thus there is incentive for the developer to have residential developments finished and accepted by the town.

It should be borne in mind that the by-law refers to "fresh water wetlands" not basins per se. It may take years for a basin to become true wetlands since wetlands are based on soils and vegetation, NOT water. In fact, depending on the basin characteristics, it may never become a wetlands and will thus be not subject to permitting.

Finally, it is important to remember that while exempted from state wetlands regulations, by being jurisdictional under the local by-law when and if they become wetlands, these basins are helping the town meet the statutory requirement that the local by-law be more restrictive than the state regulations.

2.4.5. OSRP: In your packets is a status report of "where we are" in the update of the OSRP. One of the items that I would like you input on is the development of the new map that shows the open space in town (the 4th bullet in the memo). Specifically, there are a number of parcels owned by the town which are large and open but do have some "building" or activity on them. As examples I have included maps of the lots containing a sewer pump station and the recycling center. Technically these lots have no protection, can be divided, portions sold or the use currently on them, e.g. the recycling center, expanded. As such they are not being included in the new map of open space, but they will be included on the open space inventory spread sheet and the map of all open space, both public and private, that is being updated. My question is: should these lots be included on the new open space map?

I have also enclosed a copy of the new recreation map.

2.5. Minutes

2.6. Violations:

2.6.1. 31 Hayward St: I have placed this item on the agenda due to the property owner once again failing to meet the date established by the Commission for the completion of the work specified in the enforcement order and in order to allow the owner one last opportunity to address the issue prior to court action or the imposition of fines.

3.0. Chair and Commission Comments

4.0. EXECUTIVE SESSION